

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD C HAYES,

Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF CORRECTIONS,
DAN PACHOLKE, JANE DOES,
JOHN DOES, ELIZABETH SUITER,
JEFFERY UTTECHT, SARA SMITH,
DAVIS, REYES, EDWARDS,

Defendants.

CASE NO. 3:16-CV-05095-BHS-DWC

ORDER TO SHOW CAUSE OR
AMEND

Plaintiff Donald C. Hayes, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint under 28 U.S.C. § 1915A, the Court declines to serve the Complaint but provides Plaintiff leave to file an amended pleading by April 22, 2016, to cure the deficiencies identified herein.

BACKGROUND

Plaintiff, who is currently incarcerated at Stafford Creek Corrections Center ("SCCC"), alleges his Eighth Amendment rights to adequate medical care were violated while housed at SCCC and Coyote Ridge Corrections Center ("CRCC"). Dkt. 10. Plaintiff contends he was

1 incarcerated at CRCC beginning in 2011 with chronic wounds. *Id.* at p. 11. He alleges he did not
2 receive proper care for his chronic wounds or for his drug addiction while housed at CRCC. *Id.*
3 at pp. 11-22. Plaintiff states he was released from CRCC on February 14, 2013. *Id.* at p. 22. After
4 his release, Plaintiff was apprehended on June 20, 2013. *Id.* at p. 23. Plaintiff was incarcerated at
5 SCCC on February 27, 2014, where he alleges he again received inadequate medical care for his
6 chronic wounds. *Id.* at pp. 24-38.

7 DISCUSSION

8 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
9 complaints brought by prisoners seeking relief against a governmental entity or officer or
10 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
11 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
12 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
13 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
14 152 F.3d 1193 (9th Cir. 1998).

15 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
16 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
17 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
18 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
19 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
20 (1994). To satisfy the second prong, a plaintiff must allege facts showing how individually
21 named defendants caused, or personally participated in causing, the harm alleged in the
22 complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

1 Plaintiff's Complaint suffers from deficiencies requiring dismissal if not corrected in an
2 amended complaint.

3 **A. Statute of Limitations**

4 In his Complaint, Plaintiff alleges claims beginning in July of 2011 while housed at
5 CRCC. Dkt. 10. A complaint must be timely filed. The Civil Rights Act, 42 U.S.C. § 1983,
6 contains no statute of limitations. "Thus, the federal courts [] apply the applicable period of
7 limitations under state law for the jurisdiction in which the claim arose." *Rose v. Rinaldi*, 654
8 F.2d 546, 547 (9th Cir. 1981). In *Rose*, the Ninth Circuit determined the three year limitations
9 period identified in Revised Code of Washington 4.16.080(2) is the applicable statute of
10 limitations for § 1983 cases in Washington. 654 F.2d at 547; *see* RCW 4.16.080(2).

11 The Court also applies the forum state's law regarding equitable tolling for actions
12 arising under § 1983. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). In Washington, courts
13 permit equitable tolling "when justice requires." *Millay v. Cam*, 135 Wash.2d 193, 206 (1998).
14 "The predicates for equitable tolling are bad faith, deception, or false assurances by the
15 defendant and the exercise of diligence by the plaintiff." *Id.* Courts "typically permit equitable
16 tolling to occur only sparingly, and should not extend it to a garden variety claim of excusable
17 neglect." *State v. Robinson*, 104 Wash.App. 657, 667 (2001) (internal quotations omitted).

18 Although the statute of limitations is an affirmative defense which normally may not be
19 raised by the court *sua sponte*, it may be grounds for *sua sponte* dismissal of an *in forma*
20 *pauperis* complaint where the defense is complete and obvious from the face of the pleadings or
21 the court's own records. *See Franklin v. Murphy*, 745 F.2d 1221, 1228–30 (9th Cir. 1984).

22 Plaintiff alleges he did not receive adequate care for his chronic wounds and his drug
23 addiction while he was housed at CRCC beginning on July 21, 2011. Dkt. 10, pp. 12-22. Thus,
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Plaintiff had actual notice of the facts relating to the CRCC claims in July of 2011. *See id.*; *Kimes v. Stone*, 84 F.3d 1121, 1128 (9th Cir. 1996) (a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action). The time for filing the Complaint regarding this claim therefore expired on July 21, 2014. Plaintiff signed--effectively filing--this Complaint on February 8, 2016, more than eighteen months after the statute of limitations ran.¹ Further, Plaintiff has failed to plead facts to support equitable tolling of this claim. Plaintiff must show cause as to why the claims arising from Plaintiff's incarceration at CRCC should not be dismissed based on the expiration of the statute of limitations.

B. Eighth Amendment

Plaintiff alleges he received inadequate medical care. Dkt. 10. Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (internal citation omitted); *see Hudson v. McMillan*, 503 U.S. 1, 6 (1992). An Eighth Amendment medical claim has two elements: (1) “the seriousness of the prisoner’s medical need and [(2)] the nature of the defendant’s response to that need.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.1991), *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir.1997) (en banc).

A medical need is serious “if the failure to treat the prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” *McGuckin*, 974 F.2d at 1059 (*quoting Estelle*, 429 U.S. at 104). “The existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities; or the existence of

¹ Reading the Complaint in the light most favorable to Plaintiff, Plaintiff alleged Eighth Amendment violations occurred at CRCC as late as December of 2012 or January of 2013. *Id.* at pp. 20-21. Therefore, the statute of limitations regarding the last possible CRCC claims expired in January of 2016, and Plaintiff did not execute his Complaint until February 8, 2016, which was after the limitations period expired.

1 chronic and substantial pain are examples of indications that a prisoner has a ‘serious’ need for
2 medical treatment.” *Id.* at 1059-1060.

3 If a plaintiff shows he suffered from a serious medical need, he must then show the
4 prison officials responded to the need with deliberate indifference. *See Farmer v. Brennan*, 511
5 U.S. 825, 834 (1970). Deliberate indifference to a prisoner’s serious medical need requires “a
6 purposeful act or failure to act on the part of the defendant.” *McGuckin*, 974 F.2d at 1060. In
7 other words, “[a] defendant must purposefully ignore or fail to respond to a prisoner’s pain or
8 possible medical need.” *Id.* A prison official, accordingly, will not be found deliberately
9 indifferent to a prisoner’s serious medical needs “unless the official knows of and disregards an
10 excessive risk to inmate health or safety.” *Farmer*, 511 U.S. at 837. “[T]he official must both be
11 aware of facts from which the inference could be drawn that a substantial risk of serious harm
12 exists, and he must also draw the inference.” *Id.*

13 Plaintiff has provided a detailed factual description of the events surrounding
14 Defendants’ alleged failure to provide adequate care for Plaintiff’s chronic wounds. *See* Dkt. 10.
15 However, Plaintiff’s allegations are vague and conclusory. For instance, Plaintiff alleges
16 Defendant Nurse Edwards did not have time to change his dressing, but does not explain how
17 Defendant Edwards’s actions rise to deliberate indifference. *See id.* at p. 27, ¶ 83. Plaintiff also
18 contends Defendant Bernard Warner received a letter from Plaintiff explaining his complaints,
19 but Defendant Warner refused to take action. *Id.* at p. 29, ¶ 91. Plaintiff does not show Defendant
20 Warner actually received Plaintiff’s letter and had personal knowledge of Plaintiff’s serious
21 medical need, nor explain what actions Defendant Warner failed to take which rose to deliberate
22 indifference. *Id.* Additionally, Plaintiff contends Defendant Dr. Sara Smith refused to treat
23 Plaintiff’s wounds and manage Plaintiff’s pain, but states he never spoke with Defendant Smith
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1 and she has not examined Plaintiff's wounds. *Id.* at p. 31, ¶ 98. Plaintiff fails to allege facts
 2 showing Defendant Smith knew of and disregarded an excessive risk to Plaintiff's health.²

3 While Plaintiff has alleged a myriad of facts surrounding his alleged lack of treatment for
 4 his wound care, his Complaint fails to draw the necessary connection between Defendants'
 5 knowledge and action and the alleged constitutional violations. Plaintiff must provide more than
 6 an "unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S.
 7 662, 678 (2009). Therefore, Plaintiff must explain in a short, plain statement exactly what each
 8 Defendant did or failed to do and how those actions violated Plaintiff's Eighth Amendment
 9 rights.

10 **C. Supervisory Liability**

11 Plaintiff alleges several Defendants (Jeffery Uttecht, Bernard Warner, Scott Frakes, and
 12 Dan Pacholke) are liable because they are in some type of supervisory position or position of
 13 responsibility. *See* Dkt. 10, pp. 6-8. Section 1983 supervisory liability cannot be based on
 14 *respondeat superior*. *See Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 691
 15 (1978). A § 1983 action may not be brought against a supervisor on a theory that the supervisor
 16 is liable for the acts of his or her subordinates. *See Polk County v. Dodson*, 454 U.S. 312, 325
 17 (1981). Further, to state a claim against any individual Defendant, Plaintiff must allege facts
 18 showing the individual Defendant participated in or directed the alleged violation, or knew of the
 19 violation and failed to act to prevent it. *See Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.
 20 1998), cert. denied, 525 U.S. 1154 (1999). Because vicarious liability is inapplicable to a § 1983

23 ² The Court is providing Plaintiff with examples of vague, conclusory allegations in the Complaint. The
 24 examples do not provide an exhaustive list and Plaintiff should not assume he has successfully pled a claim against a
 Defendant even if the Defendant is not specifically named in this section of this Order.

1 suit, Plaintiff must plead each Defendant, through his or her own individual actions, has violated
2 Plaintiff's constitutional rights. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

3 Plaintiff has failed to allege facts showing Defendants Uttecht, Warner, Frakes, and
4 Pacholke participated in or directed subordinates to commit the alleged violations. Plaintiff must
5 allege in specific terms how these four Defendants harmed him and how those harms violated a
6 specific constitutional right.

7 **D. Improper Defendants**

8 Plaintiff names the Washington State Department of Corrections ("DOC") as a
9 Defendant. Dkt. 10, pp. 1, 34-35. Section 1983 applies to the actions of "persons" acting under
10 the color of state law. The DOC, as an arm of the state of Washington, is not a "person" for
11 purposes of a § 1983 civil rights action. *See Will v. Michigan Dep't. of State Police*, 491 U.S.
12 58, 65, 71 (1989). Additionally, there is no evidence the state of Washington has waived its
13 Eleventh Amendment immunity in federal courts. Therefore, the DOC is a state agency which
14 cannot be sued under § 1983, and should not be named as a defendant in an amended complaint.

15 Plaintiff identifies "Jane, John Does et al." as Defendants in this action. The use of "John
16 Doe" to identify a defendant is not favored. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir.
17 1980). Although a plaintiff may be given an opportunity after filing a lawsuit to discover the
18 identity of unknown defendants through discovery, the use of Doe defendants is problematic
19 because those persons cannot be served with process until they are identified by their real names.
20 If Plaintiff chooses to file an amended complaint, he shall attempt to provide the names of
21 Defendants identified as Jane/John Doe.

E. Joinder

Plaintiff alleges his constitutional rights were violated while he was housed at CRCC and SCCC. Dkt. 10. Unrelated claims against different defendants must be pursued in multiple lawsuits.

The controlling principle appears in Fed.R.Civ.P. 18(a): ‘A party asserting a claim ... may join, [] as independent or as alternate claims, as many claims ... as the party has against an opposing party.’ Thus multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees.

George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (citing 28 U.S.C. § 1915(g)); *see also* Fed.R.Civ.P. 20(a)(2) (joinder of defendants not permitted unless both commonality and same transaction requirements are satisfied). Also, an amended complaint may not change the nature of a suit by alleging new, unrelated claims. *George*, 507 F.3d at 607 (no “buckshot” complaints).

Plaintiff is attempting to join two separate occurrences in this lawsuit. Plaintiff was housed at CRCC beginning in 2011. *See* Dkt. 10, p. 12, ¶ 25. Plaintiff was released from the custody of the Department of Corrections and CRCC on February 14, 2013. *Id.* at p. 22, ¶ 63. On February 27, 2014, over one year later, Plaintiff arrived at SCCC after being apprehended on a new charge. *Id.* at p. 24, ¶ 73. The only common fact between CRCC and SCCC is the fact Plaintiff is requesting treatment for his chronic wounds. The claims do not involve the same Defendants or the same correctional center. Therefore, if Plaintiff wishes to pursue claims against both SCCC and CRCC, he should file an amended complaint regarding the events that occurred at either SCCC or CRCC and file a separate cause of action regarding the events which

1 occurred at the other correctional center. The Court notes the claims against CRCC, as alleged,
2 are untimely and the proper venue for these claims appears to be the Eastern District of
3 Washington. *See* 28 U.S.C. § 1391(b).

4 **F. Instructions to Plaintiff and Clerk**

5 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
6 amended complaint alleging claims arising from actions occurring at SCCC or CRCC.³ Within
7 the amended complaint, he must write a short, plain statement telling the Court: (1) the
8 constitutional right Plaintiff believes was violated; (2) the name of the person who violated the
9 right; (3) exactly what the individual did or failed to do; (4) how the action or inaction of the
10 individual is connected to the violation of Plaintiff's constitutional rights; and (5) what specific
11 injury Plaintiff suffered because of the individual's conduct. *See Rizzo v. Goode*, 423 U.S. 362,
12 371–72, 377, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976).

13 Plaintiff shall present the amended complaint on the form provided by the Court. The
14 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original
15 and not a copy, it should contain the same case number, and it may not incorporate any part of
16 the original complaint by reference. The amended complaint will act as a complete substitute for
17 the original Complaint, and not as a supplement. The Court will screen the amended complaint to
18 determine whether it contains factual allegations linking each defendant to the alleged violations
19 of Plaintiff's rights. The Court will not authorize service of the amended complaint on any
20 defendant who is not specifically linked to the violation of Plaintiff's rights.

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24 ³ If Plaintiff wishes to pursue claims against a second correctional center, he must file a new § 1983 civil rights lawsuit, including the payment of the filing fee or a motion to proceed *in forma pauperis*.

1 If Plaintiff fails to file an amended complaint or fails to adequately address the issues
2 raised herein on or before April 22, 2016, the undersigned will recommend dismissal of this
3 action as frivolous pursuant to 28 U.S.C. § 1915.

4 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
5 civil rights complaint and for service. The Clerk is further directed to send copies of this Order
6 and Pro Se Instruction Sheet to Plaintiff.

7 Dated this 23rd day of March, 2016.

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10 David W. Christel
United States Magistrate Judge
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